

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

3	IN THE MATTER OF:)	Order No. 93-03
4	The Bergstrom Dump Site ("the)	ADMINISTRATIVE ORDER
5	Site"), at 230 Apache, Jean,)	PURSUANT TO SECTION 106(a)
6	Nevada.)	OF THE COMPREHENSIVE
7	Respondents:)	ENVIRONMENTAL RESPONSE,
8	A & W Smelters and Refiners,)	COMPENSATION, AND
9	Inc., of Santa Fe Springs, CA;)	LIABILITY ACT OF 1980
10	William Snavelly)	as amended, 42 U.S.C.
11	of Lancaster, CA;)	Section 9606(a)
12	-and-)	
13)	
14	David Bergstrom)	
15	of Jean, NV.)	
16)	
17)	

PREAMBLE

1. This Administrative Order ("Order") is issued on this date to the Respondents, pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 ("CERCLA"), delegated to the Administrator of the United States Environmental Protection Agency ("U.S. EPA") by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, further delegated to the EPA Regional Administrators by U.S. EPA Delegation Nos. 14-14-A and 14-14-B, and further redelegated to the Director, Hazardous Waste Management Division by Region IX Delegations 1290.41 and 1290.42.

1 2. The State of Nevada has been notified of the
2 issuance of this Order as required by Section 106(a) of CERCLA,
3 42 U.S.C. Section 9606(a).

4 3. This Order requires the Respondents to undertake
5 and complete removal activities to abate an imminent and
6 substantial endangerment to the public health and welfare or the
7 environment that may be presented by the actual or threatened
8 release of hazardous substances.

9 FINDINGS OF FACT

10 Based on available information, including the Administrative
11 Record in this matter, U.S. EPA hereby finds:

12 4. Site Description

13 The Bergstrom Dump Site ("the Site") is located at
14 the Southwest Quarter (SW 1/4) of the Southeast Quarter (SE 1/4)
15 of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE
16 1/4) in Government Lot One (1) in Section 6, Township 25 South,
17 Range 57 East, M.D.B. & M. and the address is 230 Apache, Jean,
18 Clark County, Nevada. It is an occupied residential lot of
19 property of about 2.5 acres. The Site consists of an unfenced
20 pile of about 50 cubic yards of waste slag, processed soils,
21 battery casings, and electrical components within 100 feet of the
22 Bergstrom residence. About ten additional residences are within
23 300 feet of the Site. Though in a relatively remote location,
24 the site is a residential area.

25 5. Site Characteristics

1 The waste pile is unsecured and is easily
2 accessible to persons and wildlife. Waste piles in a close
3 residential proximity provides and will continue to be an
4 attractive play area to children.

5 Investigations have revealed that the material
6 originated from the A & W Smelters and Refiners ("A & W") located
7 in Santa Fe Springs, CA. Representatives from A & W Smelters and
8 Refiners contend that the material is "mining ore" and that A & W
9 had made arrangements with William Snively to transport the
10 material to a facility in Mexico. The material was, however,
11 deposited onto David Bergstrom's property.

12 6. Respondents

- 13 a. A & W Smelters and Refiners of Santa Fe
- 14 Springs, CA, a corporation;
- 15 b. William Snively of Lancaster, CA;
- 16 c. David Bergstrom of Jean, NV.

17 A & W Smelters and Refiners is owned and operated
18 by John A. Alexander and Daryl Westerfeld. William Snively
19 brought the slag and soil materials to the Site. David Bergstrom
20 is owner and occupant of the Site.

21 7. Incident / Release Characteristics

22 Site conditions and the results from technical
23 assessment have documented the release of a hazardous substance
24 (lead) at levels that far exceed the cleanup and human health
25 criteria for this contaminant. The current situation poses the

1 threat of additional migration due to wind and rain.

2 8. Quantities and Types of Substance Present

3 On December 4, 1992, the Environmental Protection
4 Agency's Technical Assistance Team collected environmental
5 samples at the Site. Laboratory analysis of the contaminated
6 material detected lead in concentrations that ranged from 6,000
7 ppm to greater than 10,000 ppm.

8 9. Threats to Public Health and Welfare

9 Samples taken from the piles at the site have
10 tested greater than 10,000 ppm for lead. Lead in these
11 concentrations is universally considered a risk to human health,
12 especially children. Soil action levels are commonly in the 500-
13 600 ppm range. The elevated lead concentrations found at the
14 Bergstrom site pose a significant health hazard to the local
15 population. Lead and lead compounds are defined as hazardous
16 substances pursuant to the Comprehensive Environmental Response,
17 Compensation, and Liability Act of 1980, as amended (CERCLA), 40
18 CFR Section 302.4.

19 The ingestion of lead by humans is known to cause
20 damage to the kidneys, central nervous system, and cause anemia.
21 High levels of lead within the blood stream of children can also
22 cause severe learning disabilities and health disorders. The
23 United States Department of Health and Human Services, Public
24 Health Service, National Institute for Occupational Safety and
25 Health classifies lead as a potential human carcinogen.

1 Wind and rain can easily cause additional migration
2 of the lead. Wind was observed to be blowing particles from the
3 pile on December 4, 1992. The U.S. EPA's experience with heavy
4 metal contamination on soil is that the smaller the particle, the
5 higher the contaminant concentration. These are the particle
6 sizes most likely to be moved by wind and rain.

7 10. Threats to the Environment

8 The unstable nature of the pile makes exposure to
9 wildlife likely. Weather-spread lead contamination can
10 potentially contaminate the local ecosystem.

11 CONCLUSIONS OF LAW

12 Based on the foregoing Findings, U.S. EPA has concluded
13 that:

14 11. The Bergstrom Dump Site is a "facility" as defined
15 by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).

16 12. Each Respondent is a "person" as defined by
17 Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

18 13. The Respondent A & W Smelters and Refiners
19 arranged for disposal and/or transport for disposal of hazardous
20 substances at the Site.

21 14. The Respondent William Snavelly arranged for
22 disposal and/or transport for disposal of hazardous substances at
23 the Site.

24 15. The Respondent David Bergstrom is the present
25 "owner" of the Site (or a portion thereof), as defined by

1 Section 101(20) of CERCLA, 42 U.S.C. Section 9601(20).

2 16. Each Respondent is therefore a liable person under
3 Section 107(a) of CERCLA, 42 U.S.C. Section 9607.

4 17. Lead is a "hazardous substance" as defined by
5 Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14).

6 18. The presence of lead on the Site and the potential
7 for this hazardous substance to migrate and adversely affect the
8 health and well-being of the residents on and around the Site
9 constitutes an actual or threatened "release" as that term is
10 defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).

11 DETERMINATIONS

12 Based on the Findings of Fact and Conclusions of Law,
13 the Director, Hazardous Waste Management Division, EPA Region IX,
14 has made the following determinations:

15 19. The actual or threatened release of a hazardous
16 substance from the Facility may present an imminent and
17 substantial endangerment to the public health or welfare or the
18 environment.

19 20. The actions required by this Order, if properly
20 performed, are consistent with the National Contingency Plan
21 ("NCP"), 40 CFR Part 300 and CERCLA; and are appropriate to
22 protect the public health or welfare or the environment.

23 21. The conditions present at the Facility constitute
24 a threat to public health or welfare or the environment based
25 upon consideration of the factors set forth in the NCP at 40 CFR

1 section 300.415(b). These factors include, but are not limited
2 to, the following:

- 3 **a. actual or potential exposure to hazardous substances**
4 **by nearby populations, animals, or food chain;**

5 This factor is present due to the existence of lead which has
6 been detected in high concentrations at the piles on the Site.
7 The Site is unsecured, and children have been reported playing on
8 the waste piles, exposing them to contact, inhalation and
9 ingestion of lead particles.

- 10 **b. actual or potential contamination of drinking water**
11 **supplies or sensitive ecosystems;**

12 This factor is present due to the existence of lead which has
13 been detected in high concentrations at the piles on the Site.

- 14 **c. high levels of hazardous substances in soils largely at**
15 **or near the surface that may migrate;**

16 This factor is present due to the existence of lead, in a mobile
17 form, which has been detected at the piles on the Site and
18 children have been playing on and around the piles and are
19 spreading the lead. The hazardous substance may also migrate due
20 to the presence of wind and rain.

- 21 **d. weather conditions that may cause hazardous substances**
22 **to migrate or be released;**

23 This factor is present due to the existence of lead, in a mobile
24 form, which has been detected at the piles on the Site and the
25 presence of wind and rain.

e. the unavailability of other appropriate Federal or State response mechanisms to respond to the release;

The actions required by this Order are necessary because the Clark County (NV) Health Department has not requested assistance from the State of Nevada Department of Emergency Management (NV-DEM). NV-DEM cannot respond without a request from local jurisdiction.

ORDER

Based upon the foregoing Findings, Conclusions, and Determinations, and pursuant to Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a), it is hereby Ordered that the Respondents undertake the following actions under the direction of EPA's On-Scene Coordinator.

22. Upon receipt of this Order, the Respondents shall maintain twenty-four (24) hour security at the Site which meets with EPA approval.

23. The Respondents shall restrict access to the Site and shall not allow any materials, equipment, or any other item to be removed from the Site without prior EPA approval.

24. Within fourteen (14) calendar days after the effective date of this Order, the Respondents shall submit to U.S. EPA for approval, a Work Plan for the removal activities ordered as set forth in Paragraph 27 below. The Work Plan shall provide a concise description of the activities to be conducted to comply with the requirements of this Order, and shall include

1 a proposed schedule for implementing and completing the
2 activities. The Work Plan shall be reviewed by U.S. EPA, which
3 may approve, disapprove, require revisions, or modify the Work
4 Plan. The Respondents shall implement the Work Plan as finally
5 approved by U.S. EPA. Once approved, the Work Plan shall be
6 deemed to be incorporated into and made a fully enforceable part
7 of this Order.

8 25. The Work Plan shall contain a site safety and
9 health plan, a sampling and analysis plan, and a schedule of the
10 work to be performed. The site safety and health plan shall be
11 prepared in accordance with EPA's Standard Operating Safety
12 Guide, dated November, 1984, and updated July, 1988, and with the
13 Occupational Safety and Health Administration ("OSHA")
14 regulations applicable to Hazardous Waste Operations and
15 Emergency Response, 29 CFR Part 120. The Work Plan and other
16 submitted documents shall demonstrate that the Respondents can
17 properly conduct the actions required by this Order.

18 26. The Respondents shall retain a contractor
19 qualified to undertake and complete the requirements of this
20 Order, and shall notify U.S. EPA of the name of such contractor
21 within seven (7) days of the effective date of this Order. U.S.
22 EPA retains the right to disapprove of any, or all, of the
23 contractors and/or subcontractors retained by the Respondents.
24 In the event U.S. EPA disapproves of a selected contractor, the
25 Respondents shall retain a different contractor to perform the

1 work, and such selection shall be made within two (2) business
2 days following U.S. EPA's disapproval.

3 27. Within five (5) calendar days after U.S. EPA
4 approval of the Work Plan, the Respondents shall implement the
5 Work Plan as approved or modified by U.S. EPA. Failure of any
6 Respondent to properly implement all aspects of the Work Plan
7 shall be deemed to be a violation of the terms of this Order.
8 The Work Plan shall require the Respondents to perform, and
9 complete within twenty (20) calendar days after approval, at a
10 minimum, the following removal activities:

11 a. Remove all contaminated soils and sediments greater than
12 500 ppm total lead content to a RCRA treatment, storage, or
13 disposal facility.

14 b. Restore disposal site to its original condition.

15 28. The Respondents shall provide EPA with written
16 weekly summary reports. These reports should contain a summary
17 of the previous week's activities and planned up-coming events.

18 29. EPA shall be informed at least forty-eight (48)
19 hours prior to any on-Site work.

20 30. All sampling and analysis shall be consistent with
21 the "Quality Assurance/Quality Control Guidance for Removal
22 Activities": "Sampling QA/QC Plan and Data Validation
23 Procedures," EPA OSWER Directive 9360.4-01, dated April, 1990.

24 31. Any hazardous substance, pollutant, or contaminant
25 transferred off-Site as a result of this Order must be taken to a

1 facility acceptable under the EPA Off-Site Policy (OSWER
2 Directive 9834.11, November 13, 1987) in accordance with CERCLA
3 Section 121(d)(3), 42 U.S.C. §9621(d)(3).

4 32. On or before the effective date of this Order, the
5 Respondents shall designate a Project Coordinator. To the
6 greatest extent possible, the Project Coordinator shall be
7 present on site or readily available during site work. The U.S.
8 EPA has designated Robert M. Mandel, as its On-Scene Coordinator.
9 The On-Scene Coordinator and the Project Coordinator shall be
10 responsible for overseeing the implementation of this Order. To
11 the maximum extent possible, communication between the
12 Respondents and the U.S. EPA, and all documents, reports, and
13 approvals, and all other correspondence concerning the activities
14 relevant to this Order, shall be directed through the On-Scene
15 Coordinator and the Project Coordinator.

16 33. The U.S. EPA and the Respondents shall each have
17 the right to change their respective designated On-Scene
18 Coordinator or Project Coordinator. U.S. EPA shall notify the
19 Respondents, and Respondents shall notify U.S. EPA, as early as
20 possible before such a change is made, but in no case less than
21 24 hours before such a change. Notification may initially be
22 verbal, but shall promptly be reduced to writing.

23 34. The U.S. EPA On-Scene Coordinator shall have the
24 authority vested in an On-Scene Coordinator by the NCP, 40 CFR
25 Part 300, as amended, including the authority to halt, conduct,

1 or direct any work required by this Order, or to direct any other
2 response action undertaken by U.S. EPA or the Respondents at the
3 facility.

4 35. No extensions to the above time frames shall be
5 granted without sufficient cause. All extensions must be
6 requested, in writing, and shall not be deemed accepted unless
7 approved, in writing, by U.S. EPA.

8 36. All instructions by the U.S. EPA On-Scene
9 Coordinator or his designated alternate shall be binding upon the
10 Respondents as long as those instructions are not clearly
11 inconsistent with the National Contingency Plan.

12 37. To the extent that the Facility or other areas
13 where work under this Order is to be performed is owned by, or in
14 possession of, someone other than the Respondents, the
15 Respondents shall obtain all necessary access agreements. In
16 the event that after using their best efforts any Respondent is
17 unable to obtain such agreements, the Respondent shall
18 immediately notify U.S. EPA.

19 38. The Respondents shall provide access to the
20 Facility to U.S. EPA employees, contractors, agents, and
21 consultants at reasonable times, and shall permit such persons to
22 be present and move freely in the area in order to conduct
23 inspections, including taking photographs and videotapes of the
24 Facility, to do cleanup/stabilization work, to take samples to
25 monitor the work under this Order, and to conduct other

1 activities which the U.S. EPA determines to be necessary.

2 39. Nothing contained herein shall be construed to
3 prevent U.S. EPA from seeking legal or equitable relief to
4 enforce the terms of this Order, or from taking other legal or
5 equitable action as it deems appropriate and necessary, or from
6 requiring the Respondents in the future to perform additional
7 activities pursuant to CERCLA, 42 U.S.C. Section 9601, et seq.,
8 or any other applicable law.

9 40. The provisions of this Order and the directions of
10 the On-Scene Coordinator shall be binding on the employees,
11 agents, successors, and assigns of the Respondents.

12 41. Except where this Order specifically provides
13 otherwise, its obligations shall be effective three (3) calendar
14 days following issuance unless a conference is requested as
15 provided herein. If a conference is requested, this Order shall
16 be effective on the second (2nd) calendar day following the day
17 of the conference unless modified in writing by U.S. EPA.

18 42. Within forty-eight (48) hours of the effective
19 date of this Order, the Respondents shall provide notice,
20 verbally or in writing, to U.S. EPA stating their intention to
21 comply with the terms of this Order. Verbal notification must be
22 followed in writing within one (1) calendar day. In the event
23 any Respondent fails to provide such notice, that Respondent
24 shall be deemed not to have complied with the terms of this
25 Order.

1 43. The Respondents shall retain copies of all records
2 and files relating to hazardous substances found on the site for
3 six years following completion of the activities required by this
4 Order and shall make them available to the U.S. EPA prior to the
5 termination of the removal activities under this Order.

6 44. The Respondents shall submit a final report
7 summarizing the actions taken to comply with this Order. The
8 report shall contain, at a minimum: identification of the
9 facility, a description of the locations and types of hazardous
10 substances encountered at the facility upon the initiation of
11 work performed under this Order, a chronology and description of
12 the actions performed (including both the organization and
13 implementation of response activities), a listing of the
14 resources committed to perform the work under this Order
15 (including financial, personnel, mechanical and technological
16 resources), identification of all items that affected the actions
17 performed under the Order and discussion of how all problems were
18 resolved, a listing of quantities and types of materials removed
19 from the facility, a discussion of removal and disposal options
20 considered for any such materials, a listing of the ultimate
21 destination of those materials, and a presentation of the
22 analytical results of all sampling and analyses performed and
23 accompanying appendices containing all relevant paperwork accrued
24 during the action (e.g., manifests, invoices, bills, contracts,
25 permits). The final report shall also include an affidavit from

1 a person who supervised or directed the preparation of that
2 report. The affidavit shall certify under penalty of law that
3 based on personal knowledge and appropriate inquiries of all
4 other persons involved in preparation of the report, the
5 information submitted is true, accurate, and complete to the best
6 of the affiant's knowledge and belief. The report shall be
7 submitted within thirty (30) days of completion of the work
8 required by the U.S. EPA.

9 45. All notices, reports, and requests for extensions
10 submitted under terms of this Order shall be sent by certified
11 mail, return receipt requested, and addressed to the following:

12
13 one copy Robert Mandel
14 On Scene Coordinator
15 U.S. EPA H-8-3
16 75 Hawthorne Street
17 San Francisco, CA 94105
18 (415) 744-2290

19 one copy John D. Rothman
20 Senior Attorney
21 U.S. EPA (RC-1) Office of Regional Counsel
22 75 Hawthorne Street
23 San Francisco, CA 94105
24 (415) 744-1353

25 46. If any provision of this Order is deemed invalid
26 or unenforceable, the balance of this Order shall remain in full
27 force and effect.

28 ACCESS TO ADMINISTRATIVE RECORD

29 47. The Administrative Record supporting the selection
30 of the response action for this site is available for review on

1 normal business days between the hours of 9:00 a.m. and 5:00 p.m.
2 in the Office of Regional Counsel, United States Environmental
3 Protection Agency, Region IX, 75 Hawthorne Street, 16th Floor,
4 San Francisco, California. Please contact John D. Rothman,
5 Senior Attorney, at (415) 744-1353 to review the Administrative
6 Record. An index of the Administrative Record
7 is attached hereto.

8 OPPORTUNITY TO CONFER

9 48. With respect to the actions required above, the
10 Respondents may within three (3) calendar days after issuance of
11 this Order, request a conference with the U.S. EPA. Any such
12 conference shall be held within three (3) calendar days from the
13 date of request unless extended by mutual agreement of the
14 parties. At any conference held pursuant to the request, the
15 Respondents may appear in person, or be represented by an
16 attorney or other representative. If any Respondent desires such
17 a conference, the Respondent shall contact John D. Rothman,
18 Senior Attorney, at (415) 744-1353.

19 49. If such a conference is held, the Respondents may
20 present any evidence, arguments or comment regarding this Order,
21 its applicability, any factual determinations upon which the
22 actions Order is based, the appropriateness of any action which
23 the Respondents are ordered to take, or any other relevant and
24 material issue. Any such evidence, arguments or comments should
25 be reduced to writing and submitted to U.S. EPA within three (3)

1 calendar days following the conference. If no conference is
2 requested, any such evidence, arguments or comments must be
3 submitted in writing within three (3) calendar days following the
4 Effective Date of this Order. Any such writing should be
5 directed to John D. Rothman, Senior Attorney, at the address
6 cited above.

7 50. The Respondents are hereby placed on notice that
8 U.S. EPA will take any action which may be necessary in the
9 opinion of U.S. EPA for the protection of public health and
10 welfare and the environment, and Respondents may be liable under
11 Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a), for the
12 costs of those government actions.

13 PENALTIES FOR NONCOMPLIANCE

14 51. The Respondents are advised pursuant to Section
15 106(b) of CERCLA, 42 U.S.C. Section 9606(b), that willful
16 violation or subsequent failure or refusal to comply with this
17 Order, or any portion thereof, may subject the Respondents to a
18 civil penalty of up to \$25,000 per day for each day in which such
19 violation occurs, or such failure to comply continues. Failure
20 to comply with this Order, or any portion thereof, without
21 sufficient cause may also subject the Respondents to liability
22 for punitive damages in an amount three times the amount of
23 any cost incurred by the government as a result of the failure of
24 the Respondents to take proper action, pursuant to Section
25 107(c)(3) of CERCLA, 42 U.S.C. Section 9607(c)(3).

1 THIS ORDER IS ISSUED on this _____ day of _____, 1992.

2 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

3 By: Keith Takate
4 Jeff Zelikson, Director
5 ~~for~~ Hazardous Waste Management Division
6 Region IX
7

Contacts:

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Preliminary Index to the Administrative Record

<u>AUTHOR</u>	<u>ORGANIZATION AND SUBJECT</u>
1) Robert Wise	Ecology and Environment, Inc.; Preliminary Assessment of the Bergstrom Site. December 10, 1992. (fax copy)
2) Robert M. Mandel	U.S. Environmental Protection Agency: Action Memo: Request for removal action approval. December 11, 1992.

Guidance Documents

- 1) Guidance Document: Superfund Removal Procedures #3, OSWER #9360.0-038, 02/01/88 (HQ# 1006).
- 2) Guidance Document: Removal Cost Management Manual (Secondary Reference), OSWER #9360.0-028, 04/01/88 (HQ# 6001).
- 3) Guidance Document: Land Disposal Restrictions, 08/11/87 (HQ# 2204).
- 4) Guidance Document: Emergency Response Cleanup Services Contracts (ERCS), Users' Manual, 10/01/82 (RC# 9006).
- 5) Guidance Document: National Oil & Hazardous Substances Pollution Contingency Guidance, Part 300, 40 CFR CH. 1 (3-8-90 Edition), pp. 664-755, 03/08/90 (RC# 9038).
- 6) Guidance Document: Superfund Amendments & Reauthorization Act of 1986 (SARA), 10/17/86 (RC# 90100).
- 7) Guidance Document: Interim Guidance on Administrative Records for Selection of CERCLA Response Actions, OSWER 9833.3A, 03/01/89 (RC# 9013).
- 8) Guidance Document: Superfund LDR Guide #7: Determining When Land Disposal Restrictions (LDR's) are "Relevant and Appropriate" to CERCLA Response Actions, OSWER 93347.3-08FS, 12/01/89 (HQ# 2220).